MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-324

THE CITY OF DALLAS, TEXAS, THE CITY OF FORT WORTH, TEXAS, AND THE DALLAS-FORT WORTH REGIONAL AIRPORT BOARD, *Petitioners,*

v.

SOUTHWEST AIRLINES CO. and THE TEXAS AERONAUTICS COMMISSION, *Respondents.*

OBJECTION OF SOUTHWEST AIRLINES CO. TO THE MOTION OF THE AIR TRANSPORT ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Pursuant to Rule 42(3) of the Rules of the Supreme Court of the United States, Southwest Airlines Co. (Southwest) objects to the motion of the Air Transport Association of America for leave to file brief as *amicus curiae* in support of the Petition for Writ of Certiorari. Southwest's withholding of consent and objection are based upon the following grounds:

1. Prior to consideration by the Court of the Petition for Certiorari, motions for leave to file as *amicus curiae* "are not favored." Rule 42(1).

2. Although, quite obviously, neither the facts nor the applicable law support the Petition for Certiorari

and there are no special or important reasons for granting such Petition, it is astounding that the Air Transport Association of America would contend that the former Solicitor General of the United States and the law firm of Reavis, Pogue, Neal & Rose, which formerly represented Eastern Airlines, now represents Pan American World Airways, frequently jointly represents the major trunk carriers before the Civil Aeronautics Board (CAB), and one of whose senior partners is a former General Counsel and Chairman of the CAB, are incapable of presenting adequately to this Court, in the best light possible even under the exceedingly unfavorable circumstances present here, the facts and questions of law relevant to disposition of the Petition for Certiorari. Rule 42(3). In fact, the Air Transport Association of America has failed to demonstrate the existence of any facts or questions of law relevant to this controversy which have not been adequately presented to this Court by the parties, and the ATA's proposed brief is merely a paraphrase of the Petition for Certiorari, presenting the same facts and arguments urged by Petitioners. The sole purpose of the motion for leave to file and accompanying brief is to seek to influence this Court to believe that this case is of moment to the entire American airline industry when, in fact, as set forth below, its only significance relates to the private pocketbook interests of a few powerful members of the ATA in suppressing, at the expense of the traveling public, effective, lower fare, commuter airline competition from the non-CAB, non-ATA club member, Southwest Airlines Co., a small intrastate air carrier with a total fleet of four aircraft. Does the ATA really believe that Mr. Griswold and Reavis, Pogue, Neal & Rose are unable to put the best face possible upon the facts and law?

3. The eight CAB air carriers serving Dallas/Fort Worth have jointly agreed to underwrite any deficits resulting from the construction and operation of the new Dallas-Fort Worth Regional Airport (DFW), which they also, in effect, jointly agreed to construct and operate as "partners" of the Cities in order to relieve themselves of the uneconomic burden of serving two airports, only twelve air miles apart, with jet aircraft. These carriers include Delta and American which, no doubt unhampered by the belated participation of Pan American's law firm in this case, have influenced their own trade association, the ATA, to attempt to intervene prematurely in order to prejudice the outcome on the Petition. The ATA's attempt to file as *amicus* represents nothing more than "back scratching" among its members, and it is completely unable to explain why this case, involving merely a backyard quarrel among Texas cities, a Texas regulatory agency, and a tiny, Texas intrastate airline, has significant national, jurisprudential implications. Neither the Federal Aviation Administration (FAA) nor the Department of Transportation (DOT) has seen fit to intervene at any stage of these proceedings, which, to their knowledge, have been in progress since the complaint was filed in June of 1972. Apparently, the ATA intends to act as a private solicitor and attorney general in purportedly championing the non-existent powers of a Federal agency, the FAA, which has never seen fit to champion its own powers in this regard, simply because they are non-existent. The ATA's motion reveals no reason why any segment of the public or any Federal agency will now, or hereafter, be affected by this litigation and, more specifically, by denial of the Petition for Certiorari.

4. The CAB air carriers serving Dallas and Fort Worth signed contracts to transfer all of their "Certificated Air Carrier Services" to their own airport, DFW, upon its opening. Southwest did not sign such a contract. American and Delta are now suing Braniff, Dallas, Fort Worth, and, indirectly, Texas International in the Federal District Court for the Northern District of Texas in an attempt to prove that these contracts intended, and contemplated, that all of the services of the CAB air carriers, intrastate as well as interstate, should be transferred to DFW. These are wholly separate proceedings involving contractual obligations not undertaken by Southwest and are the only proceedings in which the ATA, or, more properly, some of its most powerful members, have any legitimate interest. A decision favorable to Delta and American in such proceedings would completely resolve any problems of the ATA, and its concerned members, and the issues involved in that lawsuit were not before the trial court in the instant case. The proper place for their resolution is at the trial level where the ATA, if it so chooses, and certainly its members, will be before the Court as parties.

5. The ATA has known of the instant case, and of any interest it may have, for more than two years, or at least since inception of the litigation. However, the ATA took no action to intervene as a party or *amicus curiae* until after the case had been decided by the United States Court of Appeals for the Fifth Circuit and the Petitioners had filed their Petition for a Writ of Certiorari. The only possible result of granting the motion for leave to file herein will be to delay disposition of the Petition for Certiorari, which Respondents will, in any event, conclusively demonstrate should be denied.

WHEREFORE, for each and all of the foregoing reasons, Southwest respectfully submits that the Motion of Air Transport Association of America for leave to file a brief as *amicus curiae* should be denied and that all copies of the proposed brief should be returned to the ATA.

Respectfully submitted,

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Certificate of Service

The undersigned member of the Bar of the Supreme Court of the United States hereby certifies that he has this 2nd day of November, 1974, served copies of this document upon the following counsel at the addresses set out below by depositing same in the United States Mail, postage prepaid, return receipt requested:

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONSE OF THE AIR TRANSPORT ASSOCIATION OF AMERICA TO THE OBJECTION OF SOUTHWEST AIRLINES CO.

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RESPONSE OF THE AIR TRANSPORT ASSOCIATION OF AMERICA TO THE OBJECTION OF SOUTHWEST AIRLINES CO.

The Air Transport Association of America (ATA) hereby responds to the Objection of Southwest Airlines Co. (Southwest) to ATA's Motion for leave to file brief as *amicus curiae.*

1. Southwest does not show, except by conclusory statement, that the matters set forth in ATA's brief are a mere paraphrase of the Petition for Writ of Certiorari filed by the Cities of Dallas and Fort Worth and the Dallas-Fort Worth Regional Airport Board. Examination of the brief will demonstrate that this assertion is without merit.

2. ATA recognizes that the Court will weigh the ATA Motion on traditional legal bases and will not be swayed by Southwest's postulations as to motivations, imagined cabals, or the identity and competence of attorneys representing the petitioners, whose interests are by definition not identical to those of ATA.

3. ATA continues to rely on the reasons set forth in its initial filing as a sound basis for grant of the ATA Motion.

Respectfully submitted

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/s/ Jerome F. Huisentruit
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